

4/8/05-gmk  
(Finance & Property)

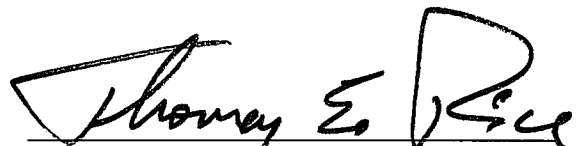
Ordinance No. 72-05

Ordinance No. 72-05 authorizing the Mayor of the City of North Canton, through the Board of Control, to enter into a Settlement Agreement and Mutual Release Agreement by and between the City of North Canton ("North Canton"), Contract Masters, Inc. ("Contract Masters"), Westfield Insurance Company ("Westfield"), and Horizon Brothers Painting Corporation ("Horizon Brothers"), and all their affiliates, agents, employees, assigns, and any other party related to any of the named parties to the Agreement, and declaring the same to be an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, STATE OF OHIO:

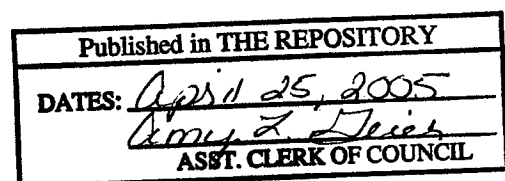
- Section 1. That the Mayor of the City of North Canton, through the Board of Control, be, and is hereby authorized to enter into the Agreement by and between North Canton, Contract Masters, Westfield, and Horizon Brothers, and all their affiliates, agents, employees, assigns, and any other party related to any of the named parties to this Agreement.
- Section 2. That said Agreement is attached hereto and incorporated herein as if fully rewritten herein.
- Section 3. That the Director of Finance of the City of North Canton, be, and is hereby authorized to draw funds necessary for the payment of the above specified Agreement upon receipt of vouchers duly approved by the proper departmental authority from appropriations applicable thereto.
- Section 4. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety, and peace of the City of North Canton and further necessary for the timely effectiveness of the Agreement; wherefore, this ordinance shall take effect and be in full force immediately upon its adoptions by Council and approval by the Mayor.

North Canton, OH  
Passed: 4/11/05

  
MAYOR  
SIGNED: April 18, 2005

ATTEST:

  
CLERK OF COUNCIL



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is between the **CITY OF NORTH CANTON** ("North Canton"), **CONTRACT MASTERS, INC.** ("Contract Masters"), **WESTFIELD INSURANCE COMPANY** ("Westfield"), and **HORIZON BROTHERS PAINTING CORPORATION** ("Horizon Brothers"), and all their affiliates, agents, employees, assigns, and any other party related to any of the named parties to this Agreement.

The Agreement between the parties is as follows:

1. Upon execution of the Agreement by the parties, North Canton shall pay \$12,500.00 to Contract Masters. An additional \$12,500.00 will be placed in the trust account of Robert E. Soles to be released on the substantial completion of the items in paragraph 2 of the Settlement Agreement and Mutual Release.

2. In consideration for the Settlement Amount, Contract Masters agrees to provide the following work to complete the Water Tank Refurbishment Project: 1,500,000 Gallon Tower 2 Hydropillar Water Tank ("Tower 2"):

- 1 Tear down the existing North Canton room and dispose of all the debris concerning that room.
- 2 Box in the existing quarter-inch copper line.
- 3 Sweep and vacuum the floor and dispose of all the debris.
- 4 Sweep and vacuum the light fixtures in the tower area and dispose of the debris.
- 5 Vacuum the condensate dome ceiling and inside tower walls up to the condensate dome ceiling and dispose of the debris.
- 6 Apply the appropriate sealer to the insulation on the wall and the condensate dome ceiling.
- 7 Apply adhesive to the wall and the condensate dome ceiling.
- 8 Apply one inch of the same original material over the existing installation.
- 9 Power wash and squeegee the floor and remove all debris on the floor of Tower 2.
- 10 Dispose of all North Canton equipment and debris which is on the floor of Tower 2.

3. Contract Masters agrees that all the work performed stated above in paragraph 2 shall be performed in a workmanlike and professional manner in accordance with the standards within the industry.

4. Contract Masters agrees that all the work performed stated above in paragraph 2 shall be performed in accordance with all applicable federal, state, and local regulations, including any environmental and health regulations. Furthermore, if it is determined that the debris to be removed by Contract Masters contains any "hazardous waste" as defined by the Environmental Protection Agency, Contract Masters agrees to clean and dispose of the "hazardous waste" as may be required by federal and state law. In addition, if such "hazardous waste" exists in the debris to be removed by Contract Masters, Contract Masters agrees to provide manifests to North Canton evidencing the disposal of any of the debris and/or equipment that is removed from Tower 2 during the cleanup process.

5. All work to be performed and completed shall be done by Contract Masters or any subcontractor of Contract Masters. However, North Canton shall be permitted to have a representative present at all times that Contract Masters is performing work

6. Contract Masters has previously provided pre-work blood tests to North Canton for its workers on Tower 2 as well as Analytical Reports concerning the materials contained in the inside sandblast and paint chips. Contract Masters does not have any additional written documentation and/or blood tests other than what has already been provided to North Canton.

7. All parties agree to dismiss all their claims with prejudice in the case before the Honorable Judge Reinbold, Case No. 2004-CV-1544, and in the case before the Honorable Judge Haas, Case No. 2004-CV-02205. Both these cases will be dismissed with prejudice.

8. However, the case before the Honorable Judge Lioi, Case No. 2004-CV-1517 will remain pending and shall not be affected in any manner by this Agreement.

9. All the parties to this Agreement, for consideration stated above, the receipt and sufficiency of which is acknowledged, hereby release and forever discharge, for themselves, their administrators, their successors, their assigns, their subrogees, their affiliates, their subsidiaries, their employees, their agents, and for any other person or entities claiming title through them, each other, of and from all claims, damages, actions, causes of actions, or suits, in law or in equity, known or unknown, of any kind and nature, direct or contingent, in any manner resulting from or arising out of any omission or commission, that result from or are any cause of any of the actions as described above.

10. Horizon Brothers, agrees to indemnify, hold harmless, and defend Contract Masters, and any parent corporations, brother/sister corporations, divisions, subsidiaries, affiliates, agents, attorneys, representatives, employees, officers, directors,

shareholders, successors and assigns against any lawsuits, claims, demands, losses, or actions that any person or entity, whether or not government related, including, but not limited to, Horizon Brothers, that arises or may arise out of or in any way related to the removal of debris which is not attributed to any work performed by Contract Masters relative to Tower 2.

11. Contract Masters, agrees to indemnify, hold harmless, and defend Horizon Brothers, and any parent corporations, brother/sister corporations, divisions, subsidiaries, affiliates, agents, attorneys, representatives, employees, officers, directors, shareholders, successors and assigns against any lawsuits, claims, demands, losses, or actions that any person or entity, whether or not government related, including, but not limited to, Contract Masters, that arises or may arise out of or in any way related to the removal of debris which is not attributed to any work performed by Horizon Brothers relative to Tower 2.

12. This Settlement Agreement and Mutual Release is contingent on the City of North Council approving it in an open meeting by ordinance or resolution. All the other parties will be required to have signed this Agreement before the City of North Canton can approve it in open meeting.

WITNESS

CITY OF NORTH CANTON

\_\_\_\_\_

By: \_\_\_\_\_  
Mayor

WITNESS

CONTRACT MASTERS, INC.

\_\_\_\_\_

By: \_\_\_\_\_

WITNESS

HORIZON BROTHERS  
PAINTING CORPORATION

\_\_\_\_\_

By: \_\_\_\_\_

WITNESS

WESTFIELD INSURANCE COMPANY

\_\_\_\_\_

By: \_\_\_\_\_